

SHEILA LEWIS-MOORE,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-03

OPINION

This is an appeal of the termination of a tenured science teacher. An evidentiary hearing occurred before a local hearing examiner on September 5, 2002. The Baltimore City Board of School Commissioners adopted the hearing examiner's recommendations and discharged Ms. Moore from employment based upon incompetence and willful neglect of duty.

On appeal to the State Board, the matter was transferred to the Office of Administrative Hearings where a hearing took place on August 22, 2003. Based upon her review of the testimony of the witnesses and the exhibits filed by the parties, the administrative law judge (ALJ) recommended that the State Board affirm the dismissal of Ms. Moore for willful neglect of duty and incompetence. A copy of the proposed decision of the ALJ is attached as Exhibit 1.

CONCLUSION

Based upon our review of the record in this matter and our consideration of the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge. For the reasons stated by the ALJ, we affirm the termination decision of the Baltimore City Board of School Commissioners.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

January 28, 2004

SHELIA LEWIS-MOORE

*** BEFORE SONDRAL. SPENCER**

APPELLANT

*** ADMINISTRATIVE LAW JUDGE,**

v.

*** MARYLAND OFFICE OF**

BALTIMORE CITY BOARD OF

*** ADMINISTRATIVE HEARINGS**

SCHOOL COMMISSIONERS

*** OAH No.: MSDE-BE-01-03-15869**

*** * * * ***

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about September 20, 2001, Shelia Lewis-Moore ("Appellant"), a teacher employed by the Baltimore City Board of School Commissioners ("Board" or "BCBSC"), received notification from the Board's Chief Executive Officer ("CEO") that she was recommending to the Board that the Appellant be terminated for incompetence and willful neglect of duty. The Appellant filed an appeal and, after exhausting the grievance process, a hearing was held before a hearing examiner on September 5, 2002 pursuant to Md. Code Ann., Educ. § 6-203 (1999 & Supp. 2002). On October 4, 2002, the hearing examiner issued a recommendation the Board affirming the CEO's decision to dismiss the Appellant for incompetence. The Board voted to uphold the recommendation of the

hearing examiner and affirm the decision of the CEO to dismiss the Appellant for incompetency. The Appellant appealed to the State Board of Education as a *de novo* appeal pursuant to the Code of Maryland Regulations (“COMAR”) 13A.01.01.03(d).

The appeal proceeded to the Maryland State Board of Education and the matter was scheduled for a *de novo* hearing before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (1999).

A hearing was conducted on August 22, 2003, before Sondra L. Spencer, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, Hunt Valley, Maryland. COMAR 13A.01.01.03P. The Appellant was present and represented by Sabrina Willis, Esquire, American Federation of Teachers, Maryland Chapter. Brian Williams, Esquire, Associate Counsel, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2003); COMAR 13A.01.01.03P; COMAR 28.02.01.

ISSUE

The issue on appeal is whether the termination imposed upon the Appellant, pursuant to Md. Code Ann., Educ. § 6-202(a) (1999 & Supp 2002), for incompetence and willful neglect of duty, is supported by a preponderance of the evidence.

SUMMARY OF THE EVIDENCE

A. Exhibits

The following documents were admitted into evidence as Joint Exhibit 1:

- Statement of Charges, dated September 20, 2001
- Letter to the Appellant from the CEO, dated July 12, 2000
- Goal Setting Conference Form, dated October 11, 1999; Portfolio Progress Review; Pre-Observation Conference Form, dated November 19, 1999; Formal Observation Report, dated December 1, 1999; Performance Improvement Plan (“PIP”); PIP Appraisal; Performance Review Report, dated January 7, 2000; Pre-Observation Conference Report, dated March 17, 2000; Formal Observation Report, dated March 31, 2000; Pre-Observation Conference Form, dated March 21, 2000; Formal Observation Report, dated March 29, 2000; Annual Evaluation Report for August 1999 through June 2000
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- PIP Continuation, dated October 13, 2000
- PIP Appraisal, dated April 16, 2001
- Memo from Deborah Randall to the Appellant, dated October 13, 2000
- Two Memos from Mildred Harper to the Appellant, dated September 25, 2000; Memo from Mildred Harper to the Appellant, dated November 13, 2000; Memo from Mildred Harper to the Appellant, dated November 15, 2000
- Excerpt from the Baltimore City Public School System Performance-Based Teacher Evaluation Handbook, August 1999
- Baltimore City Public School System Performance-Based Teacher Evaluation Handbook, September 2001

The following exhibits were submitted on behalf of the Board:

BCBSC #1 Memo to the Appellant from Mildred Harper, dated June 15, 2000

The following exhibits were admitted into evidence on behalf of the Appellant:
Appellant's #1 Packet of documents containing the following:

- a. Annual Evaluation Report, 1996-1997
Computer Printout
Annual Evaluation Report, 1998-1999
Annual Evaluation Report, 1997-1998
Annual Evaluation Report, 1995-1996
Annual Evaluation Report, 1994-1995
- b. Memo from Trez L. Brooks, Science Curriculum Specialist to the Appellant, dated March 7, 2000
- c. Memo from Andrea Bowden, Supervisor and Trez Brooks to All Participating Middle School Science Teachers, June 7, 2000
- d. Inservice Course Confirmation, dated June 15, 2000
- e. Flyer re: October 19, 2000
- f. Memo to all registered participants of the Annual Baltimore Mathematics and Science Education Conference, dated December 2, 2000
- g. Flyer re: The Annual Baltimore Mathematics and Science Education Conference, December 9, 2000
- h. Memo from Alease Owens, Instructional Resource Coordinator to the Appellant, sated January 29, 2001
- i. Schedule for Spring Professional Day – March 5, 2001
- j. Computer Printout

Appellant's #2 Appellant's Transcript from Morgan State College

Appellant's #3 Appellant's Transcript from Coppin State College

Appellant's #4 Medical Slip, dated January 8, 1999

Appellant's #5 Medical Slip from Mercy Hospital, dated November 7, 2000
(Marked, not admitted)

Appellant's #6 Medical Slip, dated November 21, 2000

B. Testimony

The Board called the following witnesses:
Deborah Randall, Principal, Hazelwood Elementary/Middle School
Mildred Harper, former Assistant Principal, Hazelwood Elementary/Middle School
The Appellant testified on her own behalf and did not present any additional witnesses.

FINDINGS OF FACT

After careful consideration of the record and the additional testimony presented, I find, by a preponderance of the evidence, the following facts:

1. The Appellant started employment with the Baltimore City Public Schools in 1978. The Appellant was laid off from 1981 until 1993. In 1993, the Appellant returned to employment with the Baltimore City Public Schools as a teacher. In 1993, the Appellant taught science, general science and life science at Harlem Middle School. In 1994, the Appellant began teaching at Hazelwood Middle School as a science teacher.
2. For the 1996-1997 school year, the Appellant was rated overall meets expectations. In the area of classroom management skills and discipline procedures, the Appellant was rated does not meet expectations.
3. In April 1999, Deborah Randall became the principal of Hazelwood Elementary/Middle School.
4. For the 1998-1999 school year, the Appellant was rated overall satisfactory. In the comment section, Ms. Randall wrote that, based on her observations of the Appellant, the rating should be unsatisfactory in the area of instruction.
5. In October 1999, the Appellant had a goal setting conference with Ms. Randall to discuss portfolio goals and review the student sample selection process, individual development plan, and performance improvement plan.
6. In November 1999, the Appellant had a pre-observation conference with Ms. Randall. Ms. Randall conducted a formal observation. In her report, Ms. Randall noted that the lesson needed to be planned with more exciting, meaningful activities, the lesson was labored and the students lost interest and the Appellant failed to keep accurate, systematic, and ongoing records of student achievement.

7. As a result of the formal observation, a Performance Improvement Plan (“PIP”) was developed for the Appellant. The purpose of the PIP was to provide the Appellant with a written guide for her to use in order for her to improve in specific areas that Ms. Randall identified as needing improvement. The PIP was divided into 4 distinct areas, identified as Planning and Preparation, Instructional Effectiveness, Management Skills and Professional Ethics. The first 3 areas were divided into 3 sections, as follows: Teacher Responsibilities, Timeline and Indicators of Success. The last section, Professional Ethics, was divided into Teacher Responsibility, Indicators of Success and Administrative Responsibilities sections. The areas targeted for improvement were teacher planning and preparation, professional responsibility and instruction. The PIP required that Appellant correct certain problems, for which assistance would be offered. Specifically, the Appellant was instructed to turn in weekly plans to Ms. Harper on Friday afternoons, implement the curriculum, write objectives, observe a lesson, submit grade book and meet with another middle teacher to get suggestions for grading system.
8. In December 1999, the Appellant’s progress on her PIP was reviewed. The reviewer noted that the Appellant’s lesson and grade book had not been submitted weekly as requested and the implementation of the instructional program was still in need of improvement. The reviewer noted that there was little to no improvement in the identified areas of preparation and planning, instruction and teacher responsibility.
9. Ms. Randall completed a Performance Review Report in January 2000. At that time, Ms. Randall rated the Appellant as unsatisfactory in the areas of teacher planning and preparation, instruction, teacher’s professional responsibilities and demonstrated student achievement. The Appellant was rated satisfactory in the area of the learning environment. The comments noted that adequate plans were not written daily, the Appellant was not adhering to the PIP, implementation of instructional program was inadequate, objectives in plans did not match what was taught, the Appellant did adhere to deadlines and there was insufficient documentation of student achievement.
10. The next review of the Appellant’s PIP was conducted on March 10, 2000. The reviewer noted that the lesson plans and grade books had not been turned in on time until recently.
11. Ms. Randall conducted a pre-observation conference on March 17, 2000. The Appellant was observed on March 22, 2000. Ms. Randall noted that the activities seemed to drag on, resulting in ineffective learning, the objective of the lesson was not taught and a more balanced teacher approach was needed for greater student success.
12. After the March 17, 2000 observation, Ms. Randall requested that a staff person from another school observe the Appellant.
13. On March 21, 2000, the assistant principal from another school conducted a pre-observation conference with the Appellant. The Appellant was observed on March 27, 2000. After the observation, the observer noted the following:

- planning does not reflect teacher understanding of student knowledge skills and readiness level
- planning does not reflect knowledge of content
- teacher does not select or develop a variety of assessments and formats related to specific learning objectives
- teacher does not establish and require students to adhere to appropriate classroom rules and standards
- teacher does not establish and maintain an atmosphere of mutual respect
- teacher does not use a variety of questioning and discussion techniques
- teacher does not use prompt and frequent reinforcement to encourage students to complete learning tasks
- teacher does not clarify and/or correct inaccurate information given by students
- teacher does not monitor or assess academic progress of students and provide constructive feedback

1. For the 1999-2000 school year, the Appellant received an overall rating of unsatisfactory. The Appellant received an unsatisfactory rating in the areas of teacher planning and preparation, instruction, teacher professional responsibilities and demonstrated student achievement. The reviewer noted that the Appellant rarely follows the school system's goals and displays weakness in content knowledge, interaction is predominately lecture style that instruction does not reflect differences in learning and the Appellant fails to comply with school policies and procedures.
2. As of July 12, 2000, the CEO accepted the Ms. Randall's recommendation to reclassify the Appellant's teacher certificate from first class to second class status for the 2000-2001 school year because of her unsatisfactory performance during the 1999-2000 school year. By notice dated July 12, 2000, the CEO advised the Appellant of this fact and advised her that she needed to improve his performance to an acceptable level during the 2000-2001 school year in order to remove the second class designation and that failure to do so could result in the Appellant's termination.
3. Ms. Randall developed a PIP for the Appellant for the 2000-2001 school year.
4. A goal setting conference was held with the Appellant on October 6, 2000.
5. The assistant principal observed the Appellant on November 1, 2000. Prior to the observation, a pre-observation conference was held on October 31, 2000. The reviewer noted the Appellant needed improvement in the areas of planning, learning environment and instruction.
6. A performance review report was completed on January 3, 2001. Ms. Randall noted that the Appellant's lesson plans had no clear structure or that the structure was chaotic; the Appellant

did not have an organized productive, orderly classroom environment; the Appellant's instructive techniques did not reflect differences in learning styles, modalities and different "intelligences"; and the Appellant failed to comply with school policies and procedures.

7. During the 2000-2001 school year, the Appellant became openly resistant to assistance, refused to sign the PIP and put forth no effort to adhere to the guidelines of the PIP. The reviewer noted that the Appellant had not submitted lesson plans or grade books as outlined in the PIP. The Appellant had not contacted other teachers or the master teacher for assistance. The Appellant did not attend the demonstration lesson scheduled for her and refused to follow the guidelines of the PIP.
8. Ms. Randall conducted a formal observation on March 21, 2001. The reviewer noted that adequate preparation was not evident in the lesson, the lesson should follow a more sequential delivery and materials should be organized. The reviewer further noted that the lesson moved on to new concepts before previously presented information had been mastered.
9. The Appellant was rated overall unsatisfactory for the 2000-2001 school year. The Appellant was rated unsatisfactory in the areas of teacher planning and preparation, the learning environment, instruction and teacher professional responsibilities. The reviewer noted that there has been little to no improvement and that the Appellant stated that she had been advised by the union not to do the PIP.
10. On September 20, 2001, Carmen Russo, CEO, recommended to the Board that the Appellant be dismissed on the grounds of incompetency and willful neglect of duty.

DISCUSSION

The applicable law provides that a teacher may be suspended or dismissed, for cause, by a local board on the recommendation of the local superintendent, and that the teacher has a right to a hearing on such a dismissal or suspension. Md. Code Ann., Educ. § 6-202(a) (1999 & Supp. 2002) reads, in pertinent part, as follows:

- (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
 - (i) Immorality;
 - (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article'
 - (iii) Insubordination;
 - (iv) Incompetency; or
 - (v) Willful neglect of duty.

- (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
- (3) If the individual requests a hearing within the 10-day period:
 - (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
 - (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.
- (4) The individual may appeal from the decision of county board to the State Board.

The standard of review in an appeal of a teacher dismissal case to the State Board is prescribed by COMAR 13A.01.01.03E. In pertinent part, COMAR 13A.01.01.01E provides:

- (3) Teacher Dismissal and Suspension.
 - (a) The standard of review in teacher dismissal or suspension shall be de novo as defined in §E(3)(b).
 - (b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.
 - (c) The county Board shall have the burden of proof.
 - (d) The State Board, in its discretion, may modify a penalty.

Pursuant to COMAR section cited above, I have undertaken an extensive review of the evidence presented and the decisions rendered in this matter from all levels. As a result of my review, I must conclude that the evidence clearly established the reasonableness of the Board's decision to dismiss the Appellant.

The Board seeks to dismiss the Appellant from her employment with the Baltimore City Public Schools on the grounds of incompetency and willful neglect of duty, based on two years of unsatisfactory performance appraisals. Prior to the 1999-2000 school year, the Appellant's teaching performance had been rated overall satisfactory. In April 1999, Deborah Randall became the principal of Hazelwood Elementary/Middle School. On the Appellant's rating for the 1998-1999 school year, Ms. Randall noted that she had some concerns regarding the Appellant and would have rated her unsatisfactory in the area of instruction. As a result of these concerns, a Performance

Improvement Plan (“PIP”) was developed for the Appellant for the 1999-2000 school year and at least two observations of the Appellant’s classroom were conducted. The Appellant did not follow the guidelines of the PIP, missed deadlines to submit lesson plans to the assistant principal and was ineffective in the classroom. Ms. Randall and the assistant principal met with the Appellant on several occasions during the 1999-2000 school year in an attempt to assist the Appellant. The Employee was offered the opportunity to observe other teachers and to attend seminars and conferences. However, by the end of the school year, it was evident that their assistance had not helped and the Appellant was rated overall unsatisfactory for the 1999-2000 school year. As a result of the unsatisfactory rating, the Appellant’s teaching certification was reduced from first class to second class. The Appellant was advised that failure to demonstrate sufficient improvement might result in her dismissal from employment with the Baltimore City Public School system.

The 2000-2001 school year began with the development of a PIP because the Employee had been rated unsatisfactory for the previous school year. The Employee refused to sign the PIP and stated that she was advised by her union not to sign the document. Again, Ms. Randall and the assistant principal met with the Appellant on several occasions to offer guidance. During the 2000-2001 school year, the Appellant became openly resistant to assistance. The Appellant’s planning and preparation and instruction, however, continued to be below standards. The Appellant did not comply with the PIP developed for her use and advised that her union advised her not to comply with it. Thus, during the 2000-2001 school year, the Appellant put forth little effort to improve her performance. As a result, the Employee was again rated overall unsatisfactory and it was recommended that she be dismissed from the Baltimore City Public School System.

The Appellant challenged the Board's position by stating that her health impacted her performance during the 1999-2000 and the 2000-2001 school years. To support her statement, the Appellant presented doctor's slip that covered the following periods, November 7 through November 9, 2000 and November 27, 2000. The Appellant explained that she suffers from hypertension, which was the cause of her absences and the decline in her performance. The Appellant testified that she could not remember if she told Ms. Randall or the assistant principal about her health. She did not request an aide or long term leave for the years in question.

The evidence regarding the Employee's health is not sufficient to overturn the recommendation for dismissal. There is no evidence presented to show how the Appellant's hypertension affected her ability to perform her duties as a teacher. There is no evidence presented that the Appellant's hypertension interfered with her ability to perform her duties as a teacher. The recommendation for dismissal was based on the Employee's performance, not her attendance. Clearly, her use of leave was not a factor in the decision to recommend her dismissal.

The Appellant also argued that her due process rights were violated because she was not evaluated after the 2000-2001 school year. As previously discussed, as of September 20, 2001, the CEO recommended that Employee's dismissal because of two years of overall unsatisfactory ratings. The Appellant appealed the recommendation and worked during the pendency of the appeal. In light of the decision to dismiss the Appellant, there would no reason to continue to evaluate her. The Appellant has not shown that any of her due process rights involving challenging the dismissal have been violated.

Overall, the Appellant performance during the 1999-2000 and 2000-2001 school years needed improvement on many levels including instructional effectiveness, planning and

preparation and professional responsibility. Prior to the 1999-2000 school year, the Employee had received overall satisfactory ratings. However, Ms. Randall noted deficiencies in the area of instruction in the rating for the 1998-1999 school year. The Appellant was certainly placed on notice that her performance was lacking and provided every opportunity to correct the deficiencies. Thus, despite prior years of satisfactory performance, the two consecutive years of unsatisfactory performance is sufficient justification for the Board to dismiss the Appellant. The evidence established that she was given ample opportunity and resources to correct her problems.

The Appellant's failure to improve her performance after being placed on second class status, her failure to adhere to and cooperate with the Performance Improvement Plan and her two consecutive years of unsatisfactory ratings constitute "willful neglect of duty" and "incompetence" under the statute. Accordingly, the Board must prevail in this case and their action upheld.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant, Shelia Lewis-Moore, a teacher employed by the Baltimore City Board of School Commissioners, was properly dismissed because of willful neglect of duty and incompetence. Md. Educ. Code Ann. §6-202(a).

PROPOSED ORDER

It is proposed that the decision of the Baltimore City Board of School Commissioners dismissing the Appellant for willful neglect of duty and incompetence be **UPHELD**.

October 10, 2003

Sondra L. Spencer
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

SHELIA LEWIS-MOORE

*** BEFORE SONDRAL. SPENCER**

APPELLANT

*** ADMINISTRATIVE LAW JUDGE,**

v.

*** MARYLAND OFFICE OF**

BALTIMORE CITY BOARD OF

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SCHOOL COMMISSIONERS

*** OAH No.: MSDE-BE-01-03-15869**

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FILE EXHIBIT LIST

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The following exhibits were submitted on behalf of the Board:

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- BCBSC #2 Memo to the Appellant from Mildred Harper, dated May 16, 2000

The following exhibits were admitted into evidence on behalf of the Appellant:

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